IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PEITION NO.1370 OF 2006

Abdul Shakoor Usman Memon. ...Petitioner.
Versus
Special Land Acquisition Officer, Mumbai &Ors. ...Respondents.
.....
Mr.P. G. Karande for the Petitioner.
Mr. K. R. Belosey, Government Pleader for Respondent Nos.1 to 3.
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CORAM : DR. D.Y. CHANDRACHUD, J.

January 23, 2007.

P.C.:

The petitioner seeks to impugn an order passed by the Special Land Acquisition Officer attached to the Mumbai Building Repairs and Reconstruction Board on 3rd May 2005.

2. The dispute relates to a property which falls in the Cessed A-category, upon which a building known by the name of "Raj Manzil Building" has been constructed. The building was constructed in 1905-06 and consists of a ground floor and two floors with 24 tenements. On 26th March 1996, the Petitioner together with 22 other occupiers submitted a proposal for the formation of a Co-operative Housing Society and for the better preservation of the building under Chapter VIIIA of the Maharashtra

Housing and Area Development Act, 1976. On 22nd September 1996, the Executive Engineer of the Mumbai Building Repairs and Reconstruction Board recommended that proposal after carrying out an inspection. The Executive Engineer recorded that the building has a wooden skeleton, load bearing walls and most of the wooden components had decayed. The staircase is found to have broken down and the wooden components below the roof had decayed. The structure was supported by props and the building was found to be in urgent need of structural repairs. On 21st December 1996, MHADA recommended the proposal and forwarded it to the State of Maharashtra for approval. On 17th March 1997, an amount of Rs.30,000/- was deposited by the Petitioner being approximately 30% of the price of acquisition with MHADA. The proposal was approved by the State Government on 5th December 1997 and a GR was issued. Proceedings were thereafter instituted by the Special Land Acquisition Officer with a notice to show cause dated 12th June 1998 to the owners and all concerned. In the meantime, in 1998-99 the building came to be repaired at an estimated cost of Rs. 4.31 lakhs. Initially the SLAO passed an order dated 15th February 2005 for keeping the proposal pending till the decision of the Court of Small Causes in certain

Eviction Suits filed by the Fourth Respondent against the tenants. Subsequently, by an order dated 3rd May 2005 the SLAO decided to drop the proposal.

3. On behalf of the Petitioner, it has been submitted that each of the three grounds that weighed with the SLAO in dropping the proposal is specious. The proposal was supported by 22 tenants. The inspection extract of the Municipal Corporation shows that there are 24 tenants. Consequently, it was submitted that the proposal was supported by the necessary number, being in excess of 70% of the occupiers. The fact that the occupants of three tenements were not in occupation on the date of the proposal was not, it was urged, a valid consideration nor for that matter was the question as to whether the owner is residing in the building a valid ground. It was urged that the SLAO has rejected the proposal for reasons which are ex-facie extraneous.

4. There is merit in the submission which has been urged on behalf of the Petitioner. The proposal, it may be noted, has already been recommended by MHADA and is approved by the State Government by issuing a GR dated 5th December 1997.

Since the proposal has been supported by 22 tenants, it cannot be said that an adequate number of occupiers – 70% as required in law is lacking. There being 24 tenants, the proposal does have the support of more than 75% of the occupiers. Moreover, that three rooms were not in the occupation of the occupiers or that the owner was not staying in the building is a wholly extraneous circumstance, which weighed with the SLAO.

5. In these circumstances, the petition is allowed by quashing and setting aside the impugned order dated 3rd May 2005. The proceedings shall be remitted back to the Special Land Acquisition Officer for fresh orders in accordance with law. On remand, the Special Land Acquisition Officer shall pass a fresh order within a period of three months from today. Since the question of the constitutional validity of Chapter VIIIA is stated by the Learned Government Pleader to be pending before the Supreme Court, the Government Pleader stated that the interim orders of the Supreme Court will be observed. The petition is accordingly disposed of. No order as to costs.

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